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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 320

JOHN J. WINBERRY,

Petitioner,

vs.

W. BURTON SALISBURY

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

FRANK G. SCHLOSSER,
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Petitioner prays that a writ of certiorari issue to review the judgment (R. 47) of the Supreme Court of the State of New Jersey filed June 27, 1950, mandate (R. 47) issued July 6, 1950, which mandate affirmed a judgment (R. 21) of the Superior Court, Appellate Division, dismissing petitioner's constitutional appeal from an order (R. 16) of the Law Division of the same court. The order appealed from summary dismissed petitioner's suit to expunge a grand jury libel (R. 2-15) upon him from the files of court, which libel was published in violation of petitioner's rights under Amendments V and XIV to the Constitution of the United States (R. 1) and under the Constitution of the State of New Jersey (R. 1).

Opinions Below

The opinion of the Supreme Court of New Jersey (R. 23) is reported in 5 N. J. 240. That of the Appellate Division (R. 18) is reported in 5 N. J. Super. 30.

Jurisdiction

The Supreme Court of New Jersey is the highest court of the State. Its judgment was entered *nisi* on June 27, 1950, and mandate on affirmance (R. 47) was issued July 6, 1950. This Petition is filed September 20, 1950.

The jurisdiction of this court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. C. A. s. 1257, authorizing review of final judgments rendered in the highest court of a State by writ of certiorari where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, &c., of the United States, or where any title, right, privilege or immunity under the Constitution, &c., is specially set up or claimed.

Questions Presented

1. Whether the New Jersey appellate courts denied due process of law to petitioner by invoking against him a new 45-day appeal court rule, never before construed, in the face of a long-standing unrepealed 1-year appeal statute when, at the time petitioner took his appeal, statute and rule were in conflict, no court decision resolving the conflict existed, and the appeal was taken 61 days after adverse judgment and 44 days after amendment of that judgment.

2. Whether state appellate courts can constitutionally use a litigant as a guinea pig and invoke against him a new legal doctrine, never before promulgated, and on the basis of such new doctrine applied ex post facto deprive him of his right to an appeal given him by the state Constitution.

3. Whether, in view of the constitutional command that the "United States shall guarantee to every State in this Union a Republican Form of Government" (Art. IV, Sec. 4 of the federal Constitution), an appointive state court of last resort can constitutionally oust an elected legislature from jurisdiction over matters of practice and procedure, thus upsetting the system of constitutional checks and balances inherent in a republic and leaving the people (who have no voice in selection of the judges) helpless to effect change.

Statement

JOHN J. WINBERRY (hereinafter sometimes called the petitioner) suffered dismissal of his state constitutional appeal from an adverse trial court decision. The appeal was dismissed under a ruling that a new 45-day appeal rule adopted by the State Supreme Court had repealed or superseded a 1-year appeal statute of long standing, although the new rule of court did not expressly repeal the statute and no one in New Jersey ever had notice of such asserted repeal. The new doctrine was first invoked against petitioner, without prior notice to him or anyone else that the Judicial Branch of the state government had or even claimed to have supremacy over the Legislative Branch under the new state Constitution adopted in 1947 or that the new 45-day appeal rule applied in the face of the 1-year statute of long standing.

Statute and rule are in conflict and the rule did not attempt to repeal the statute. Winberry relied upon the statute and appealed 61 days after judgment, and 44 days after the trial court had amended that judgment. His appeal was taken within time under the statute, but was held out of time under the court rule. In this there was a denial of due process of law arising out of lack of notice to petitioner that he must take his constitutional appeal within the 45 days prescribed by court rule and not the 1 year allowed by statute.

Assuming that future litigants will have notice from the decision in this cause that they must exercise within 45 days the right of appeal granted by the new state Constitution, Winberry had no such notice. He was the legal guinea pig whose case made the law, a law of which he learned for the first time after it came too late to guide him. He did not receive due process under the law of the land which notifies before it hears and condemns no one unheard.

Winberry was a deputy New Jersey attorney general, and a public prosecutor attempting to stamp out organized gambling in Middlesex County, New Jersey. In April, 1947, Supreme Court Justice Frederic R. Colie had nominated him for the appointment and Attorney General Walter D. Van Riper had reluctantly acceded to the wishes of Mr. Justice Colie (R. 3) and made the appointment. Winberry's special assignment was to assist in the conduct of the criminal business of Middlesex County with regard to gambling and its ramifications (R. 3) because of the breakdown of effective law enforcement in that county (R. 15).

Winberry's relations with Attorney General Van Riper were strained. A Democrat, his appointment was not relished by Van Riper, a powerful Republican. Mr. Van Riper did not like to give Republican patronage to a Democrat, but give it he had to on the request of Mr. Justice Colie, himself also a Republican, who wanted a man he could trust and found that man in Winberry. The strain was increased when Winberry reported to the Justice and not Van Riper, whereafter Van Riper began to withhold payment of the Winberry investigation bills (R. 9-10) thus crippling the deputy attorney general.

In November, 1948, Van Riper fired Winberry. At this time Mr. Justice Colie was out of the way, having been assigned to a different court when the new state Constitution went into complete operation on September 15, 1948. Winberry was adroitly goaded into accusing Van Riper of

sabotage and then the Attorney General summarily dismissed him, ending the investigation just as Winberry was about to move against the heads of the gambling syndicate in Middlesex County.

The gamblers thus escaped, but the matter did not end there. At that time Attorney General Van Riper held enormous powers, by reason of his office. No judge in the state could be appointed without Van Riper's clearance; no public prosecutor could act if Van Riper, on the governor's request, decided to move into any of the 21 counties of New Jersey; the entire force of the State Police was his to command and use, when and how he wanted to use them. Winberry had not challenged a windmill, like Quixote, but an armored knight and a private army. His punishment was one of public defamation, administered through the county grand jury, under circumstances now to be related.

After his dismissal by Attorney General Van Riper, Winberry made a written report to Judge Colie (R. 4). In it he said (among other things): "It is a deplorable circumstance, but true that I had obtained very vital evidence just forty-eight hours before the Attorney General saw fit to order my dismissal" (R. 5). Thereupon Van Riper sent a new deputy before the Middlesex Grand Jury, had the charges tried in camera behind the closed door of the jury room, and was exonerated of wrongdoing while Winberry was smeared in public by an extraordinary "presentment" signed, filed and made public as a court record by Salisbury as foreman of the jury (R. 2-15).

The presentment, covering 15 pages in the printed record (R. 2-15), is an elaborate document, far beyond the abilities of ordinary grand jurors to produce, painstakingly prepared by some anonymous person (evidently a skillful, highly trained lawyer). It libels Winberry and acquits Van Riper. Published, as it was, in the state-wide press the

libel defamed Winberry. In carefully chosen words Winberry was branded, in effect, as a pathological liar. It was said, through Foreman Salisbury, that Winberry's conduct had indicated "an irresponsibility requiring censure" (R. 9) and that someone (meaning Winberry) had made statements "in such utter disregard of anything evidencing their truth as to indicate on the part of the author malice and reprehensible conduct" (R. 14).

Such a presentment is not an indictment, not being intended as such. It is used in New Jersey (and some other states) as a shield against libel suits.

The grand jury cannot be sued civilly for libel, but a libellous presentment may be expunged. *O'Regan* v. *Schermerhorn,* N. J. Sup. 1946, 25 N. J. Misc. 1, 31. Accordingly Winberry filed suit to expunge (R. 1-15) but his action was summarily dismissed (R. 16). The dismissal was affirmed on appeal on a holding that the new 45-day appeal rule took precedence over the long-standing 1-year appeal statute, although until the New Jersey appellate courts announced the new doctrine in Winberry's appeal the statute expressed the public policy of New Jersey and was the law of the State.

In New Jersey the Legislative and Judicial Branches are engaged in a constitutional struggle and Winberry is the unwilling victim of that strife. With statute and rule in hopeless conflict he has been made to guess at their meanings and differ as to their application, and has been held responsible for guessing wrong notwithstanding lack of any standard to assist him in correctly resolving the conflict. With two legislatures in the State (the Senate and House of Assembly being one and the Supreme Court the other) Winberry at his peril had to decide for himself which legislature's acts were supreme, upon pain of losing his constitutional right to an appeal if he were wrong. Such a condition

of state affairs amounts to a denial of due process when it is sought to visit upon the litigant a penalty for wrong-guessing at a time when guessing alone was possible.

The Conflict in New Jersey

In November, 1947, the people of New Jersey adopted a new Constitution to supersede the 1844 Constitution. The new charter went into effect January 1, 1948, except for the Judicial Article which became operative September 15, 1948.

The 1947 constitution abolished the old judicial system and created a new one headed by the Supreme Court of New Jersey, upon which court was conferred the rule-making power in these words: "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts." N. J. Const. 1947, Art. VI, Section II, Para. 3.

In the Constitutional Convention held at New Brunswick in the Summer of 1947 it was the intention to confer upon the new Supreme Court a power to administer all courts in the State without legislative interference and a power to make rules governing practice and procedure subject to the will of the people as expressed by their elected representatives in the Legislature. This intent was expressed in constitutional language by making the rule-making power "subject to law". The meaning of that restrictive phrase is not in doubt. It is plainly set forth in the Report of the Committee on the Judiciary, Constitutional Convention 1947, annotating the rule-making power as follows: "Sec. II, Par. 3. Responsibility for administration, practice and procedure in all the courts of the State is vested in the Supreme Court, but the Legislature may revise or repeal the rules of practice and procedure, or initiate new provisions on the subject. * * *" *Report of the Committee*

on the Judiciary, August 26, 1947, at p. 17. The convention did not adopt the proposed new Constitution until September 10, at which time the Report was before the delegates and necessarily influenced their votes. That same Report was before the people on election day in 1947 when, at a referendum, they adopted the new Constitution and were necessarily influenced in so doing by the Report. At no time were delegates or voters ever informed that adoption of the new charter would result in the people of New Jersey losing all control over life, liberty and property as affected by rules of practice enacted by the Supreme Court of New Jersey, nor did they ever intend to erect two legislatures, each independent of the other within their respective spheres.

It is not likely that a free people would voluntarily deliver themselves and their children and their children's children over to an appointive court over which they had no control. With an elective judiciary the situation might be altered but the New Jersey judges being appointed by the Governor and confirmed by majority vote of the State Senate, elected one for each of the 21 counties of the State, the people have no voice in their appointment and no control over them, especially when after one reappointment each judge has tenure of office for life or until attaining the retirement age of 70 years. No people can be free in such a situation but must submit to the rules of the judiciary which rules, however well intended, amount in effect to government without the consent of the governed.

The constitutional conflict in New Jersey did not develop until the Legislature refused to put the new court rules into operation without legislative change in 1948. In the beginning a spirit of cooperation prevailed among the three branches of government, but this spirit evaporated in the Legislative Branch in the course of events now about to be related.

The members of the new 7-judge Supreme Court were appointed and confirmed in advance of September 15, 1948, when the Judicial Article of the new Constitution went into operation. After their appointment the judges-designate of the Supreme Court set in motion rule-making machinery in order to obtain sound rules and a simple system of civil and criminal practice. The model used was the federal rules, upon which the court-to-be caused a tentative draft to be prepared and submitted to bench, bar and citizens of New Jersey. Criticism and advice were sought and given, whereafter a final draft of the new rules was prepared under date of June 21, 1948, effective upon the birth of the new judicial system on September 15, 1948. Thereupon the Legislature spent a good part of that Summer enacting legislation designed to implement the constitutional provisions setting up the new judicial system.

It soon became apparent that the Legislature would not approve the new rules without change. On August 23, 1948, Senator Hannold introduced into the State Senate a bill known as Senate 58. This bill provided that the new rules promulgated by the Supreme Court to take effect September 15, 1948, "shall govern the practice and procedure in said courts and before the Surrogates, except as otherwise provided in this act, and the said Rules shall supersede (so far as they conflict with) statutory and common law practice and procedural regulations heretofore existing." In Senate 58 the Legislature made a few changes in the proposed rules and the bill, after passing both houses, was vetoed by Governor Driscoll on October 30, 1948, six weeks after the effective date of the rules.

After the veto of Senate 58 the new rules stood (and remain) without legislative support and in many instances conflicted with the statutes of New Jersey. At this juncture the Supreme Court could have attempted to resolve the con-

flict or could have announced to the people that the rules stood and in standing superseded prior conflicting legislation. The court did neither, thus leaving everyone in doubt. If the court had given notice that its rules governed to the exclusion of existing conflicting statutes Winberry could have been guided thereby and appealed or not within the 45-day rule, instead of relying upon the 1-year appeal statute and spending his money on a fruitless appeal. The dilemma was no fault of his but it resulted for him in denial of due process when the Supreme Court announced the doctrine that it was supreme and made that announcement for the first time to Winberry in his own appeal. This is equivalent to condemning without prior notice, the direct opposite of the law of the land, and as such is a denial of due process.

Reasons for Granting Certiorari

While an appeal is not an indispensable element of due process, yet on the principles adopted in *Frank* v. *Mangum*, U. S. Sup. 1915, 237 U. S. 309, 327, where the state provides an appeal the proceedings thereon are part of the process of law and are to be considered in determining any question of alleged deprivation of due process. Lack of due process in a state-provided appeal is just as fatal as the same lack in a trial court. If this were not so the right to appeal would be a mockery. Appellate procedure is guided by the overriding principles of due process: litigants must receive reasonable notice of time allowed for appeal; such notice may be given by statute or rule and will suffice when the litigant is not left in doubt, but when the notice necessarily arises out of enactments so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application it amounts to no notice at all and thus violates the first essential of due process of law. That is the case here where, with statute and rule in

conflict, the appellant could not know, under conditions as they then stood, within what time he had either to appeal or submit to the adverse judgment.

By constitutional grant in New Jersey every litigant has the right to one appeal. N. J. Const. 1947, Art. VI, Section V, Paragraphs 1, 2, and 3. The constitution is silent upon time for appeal, thus impliedly authorizing legislation upon that subject, but existing laws were to continue: "All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force at the time this Constitution or any Article thereof takes effect shall remain in full force until they expire or are superseded, altered or repealed by this Constitution or otherwise." N. J. Const. 1947, Art. XI, Sec. 1, Para. 3.

Under the Constitution R. S. 2:27-356, giving 1 year for appeal in civil cases, was to continue and remain in full force until expiration or until superseded, altered or repealed. If the Constitution had intended to permit the Judicial Branch to repeal longstanding statutes by court rule it would and should have said so. Moreover, the court in adopting the rules—if it then claimed the power it later asserted in this very case—would have and should have included such a repealer. It did not do so. Such a startling omission is strong evidence that the court did not (in 1948) claim paramountcy over the Legislature, and made that claim in 1950 (in the words of Mr. Justice Case) because it desired "to save the body of rules which, with care and labor, has been built up during the past two and a half years from being scuttled * * *" (R. 45).

The spirit behind the new court rules in New Jersey is laudable, but their invocation against Winberry ex post facto denies him that due process of law guaranteed by the Fourteenth Amendment. Such denial caused him to lose the liberty of enjoying a good reputation; it also caused him to lose his property, i. e., the money he has had to pay

to the printers for setting up the trial court record for use on his appeal, which record became utterly worthless when the appellate courts of New Jersey refused to hear that appeal. The type had to be pied and Winberry had to pay for the labor of original printing composition which had progressed as far as page proofs before notice of motion to dismiss his appeal was served upon him. If the laws of New Jersey had not been vague, as they were, this loss would not have occurred. His appeal, taken in good faith and in reliance upon an unrepealed statute without any notice that the new 45-day court rule governed, should have been heard on the merits. Instead he became the legal guinea pig, but while such an animal is helpless Winberry is clothed with protection of the Fourteenth Amendment which forbids use of litigants for the announcement of new doctrines of law.

It is an elementary principle of constitutional law that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 221; *Collins* v. *Kentucky*, 234 U. S. 634, 638; *Connally* v. *General Construction Co.*, 269 U. S. 385, 391; *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453; cf. *Winters* v. *New York*, 333 U. S. 507, 515. While that constitutional principle is ordinarily invoked in the criminal law it is just as valid in civil law.

When the law of a State is so vague, as it was in New Jersey until this very case was decided by the state court of last resort, that men had to guess and differ over it, due process of law is absent. It is indeed rare for such a situation to arise, but it has arisen in New Jersey. The court made the law on June 27, 1950, when its decision (R. 23) was announced, and applied it to Winberry retroactively and ex post facto by a vote of 6-1 on dismissal and by a vote of 5-1

on the validity of its new doctrine of court supremacy (R. 22). Until then no one knew or could have known what the law was. How can Winberry constitutionally lose his rights for failure to guess correctly, when the court never announced the law until deciding his case?

Moreover, we think that the doctrine of judicial supremacy over the Legislature in matters of practice and procedure, announced now for the first time by the state court of last resort in petitioner's appeal, conflicts with the guaranty of a republican form of government given in Article IV, Section 4 of the Constitution of the United States. That guaranty means that the people of New Jersey will live under a form of government responsive to the popular will and that petitioner, as a citizen of New Jersey, will live in the same manner. If force must be employed to carry out that guaranty the political power of the federal government will be used but where, as here, no force is required the Judicial Department will enforce the right.

To be republican in form a state government requires something more than mere absence of a monarchy or dictatorship—there must also exist a real division of powers among at least three branches of government: legislative, executive and judicial; and the state government must derive its just powers from the consent of the governed.

When the new Constitution was drafted in convention at New Brunswick in 1947 the new government was republican in form, with powers divided among three branches, each expressly forbidden to exercise any of the powers properly belonging to either of the others, except as expressly provided in the Constitution. N. J. Const. 1947, Article III, Para. 1. That Constitution did not expressly confer any final legislative power upon the Supreme Court of New Jersey, but only a rule-making power carefully limited so as to be "subject to law." The phrase "subject to law" was employed to allow the Legislature to con-

trol the court's exercise of power over the lives, liberties and property of the people, for the elected Legislature is responsive to the people's will while the appointed judges are not. Moreover, when the convention delegates and the people adopted the new Constitution they had before them the Report of the Committee on the Judiciary, which report expressly stated that the Legislature may revise or repeal the rules of court. Now that the court has decided that it has paramountcy over the Legislature, notwithstanding that Report, the result is that there exist in New Jersey two legislatures, one responsive to the people and the other not responsive. Such a condition denies a republican form of government to the almost 5 million people of New Jersey, including petitioner, who will lose life or liberty or property, or all three, under court rules imposed without legislative support and without the consent of the governed.

Assuming the right of the Supreme Court of New Jersey to interpret with finality the meaning of the New Jersey Constitution, nevertheless when the interpretation results in denial of a republican form of government the matter becomes one for final interpretation by the Supreme Court of the United States, within whose exclusive province lies the interpretation of the Constitution of the United States.

When, as construed by a state court of last resort, a state Constitution contravenes the United States Constitution the people of the State must turn to the Supreme Court of the United States for relief. They have no other redress. As one of the people of New Jersey petitioner has both right and duty to appeal to this court under the extraordinary circumstances of this case.

The opinions below were delivered by two of New Jersey's greatest lawyers. The prevailing opinion (R. 23-35) by Mr. Chief Justice Vanderbilt attracted 4 votes in addition to his own. That of Mr. Justice Case, lately Chief Justice of the former Supreme Court, denies the court's power to leg-

islate with finality (R. 35-46). Mr. Justice Heher voted for petitioner against dismissal and did not take a position on the court's power. Thus the court was not unanimous and on the constitutional question the vote was 5-1 (R. 22), with former Chief Justice Case in a carefully reasoned opinion denying the court's power and saying much in little when he wrote: "The desire, I take it, is to save the body of rules * * * from being scuttled" (R. 45).

In the federal system the court of last resort is empowered to make rules, but that power was granted by an elected Congress and is subject to the people's will. No one can complain of such a matter, for the federal rules exist with the consent of the governed and can be altered by the people of the United States, if necessary, through their elected senators and representatives. In New Jersey the people have lost their power to change, and it is this loss which denies them a republican form of government.

It is right that the Judicial Branch should have rule-making power, so long as the people may make changes if necessary. It is wrong, however, for the judiciary, living apart from the people as they must, to have that power free of the people's will. To the extent that our court may legislate we, our children, and our children's children will be governed without consent, our Legislature will be ousted of jurisdiction over important matters of public policy, and a republican form of government will not exist in New Jersey. It is theoretically true that we may amend our Constitution, but the task would be difficult in the extreme and must result in defeat for us if the opponents of change could muster 11 votes in the State Senate to which each county, regardless of population, elects one member. In our Senate, selected on an acreage basis instead of population, a rural senator whose county contains more cows than people has the same vote as the senator from Essex which contains

almost a million inhabitants. Moreover, since our people never intended to surrender sovereignty to the Judicial Branch they ought not to be compelled to endure the present situation in New Jersey unless and until they can amend their Constitution, for that Constitution was never intended to give the court the power it has now decided it possesses.

The danger inherent in the present constitutional conflict in New Jersey, with court and Legislature still at odds, is intensified by the undoubted high purpose of the present members of the New Jersey court of last resort. Their honesty of purpose and purity of intention are not open to question, for which reason it is often said that their rules, being intended for the public good, should be accepted and that any one who questions the wisdom of an unrestrained rule-making power is impliedly impugning the integrity of the judges. A bad means will not, however, justify a good end and the Constitution of the United States cannot be lightly set aside simply because present exercise of the rule-making power is beyond reproach. The Bench will change over the years. What assurance have the people of New Jersey that other judges, all free of popular control, will not offend? Constitutions exist because a people cannot repose its entire trust in men.

A free people must retain control, for the Judicial Branch not being elected by popular ballot no other practicable restraint is possible. The lives, the liberties, and the property of the people are jeopardized by rules of court, for which reason the people of New Jersey must have control over them, if necessary to correct them, if they are to have a republican form of government.

The 150 million people of the United States are vitally interested in the outcome of this case, for if the New Jersey result is not altered by this court it is not unlikely that

many of the 48 states may be led to follow the example, leaving millions of people beyond the borders of New Jersey similarly deprived of a republican form of government and governed, without their consent, by an appointive judiciary.

When the guaranty of a republican form of government was inserted in the Constitution, some thought it to be a needless precaution. "But," wrote Madison, "who can say what experiments may be produced by the caprice of various states, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers?" While the guaranty goes to the states, it necessarily follows that it also goes to the people of the states and through them to the petitioner as a citizen of New Jersey.

To be republican in form the State of New Jersey must maintain a government which derives all its powers from the people. At the present time the State does not do that, for the Judicial Branch of the state government legislates with finality upon legal subjects of enormous scope and does so without the approval of the Legislature and without the expressed consent of the people. "Practice and procedure" deals with matters of great moment; right to trial by jury in cases not covered by the Constitution; time for appeal; deposits for costs—in fact every part of criminal and civil law not embraced by the substantive law, all now lost to the people of New Jersey and with the full extent of their loss not measurable for generations. When such a condition arises out of a decision of a state court interpreting its own powers, this court must act to examine into the matter and correct the evil if necessary to restore to New Jersey a government republican in form.

In the present cause we think a proper showing has been made under the Act of June 25, 1948, c. 646, 62 Stat. 929, for review. Rule 1:2-5(b) of the Supreme Court of New Jersey

allows 45 days for appeal and has the force and effect of a statute, the validity of which is drawn in question on the ground of its being repugnant to the Constitution of the United States. Moreover, in his complaint (R. 1) petitioner specially set up and claimed the protection of Amendments V and XIV of the Constitution of the United States, and the dismissal of his appeal under the extraordinary circumstances of this case not only deprives him of due process of law but also prevents his receiving the rights, privileges and immunities given to him under the Constitution as specially set up and claimed. In addition he has the right to live under a republican form of government and only this court can enforce that right.

The petitioner therefore respectfully submits that his petition for a writ of certiorari to the Supreme Court of New Jersey should be granted.

FRANK G. SCHLOSSER,
Counsel for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 320.

JOHN J. WINBERRY,

Petitioner,

vs.

W. BURTON SALISBURY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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